

Remarks

The Final Office Action dated November 27, 2009, lists the following rejections: claims 1-8 and 12-19 stand rejected under 35 U.S.C. § 103(a) over Erixon (U.S. Patent No. 7,233,678); claims 9-11 and 20 stand rejected under 35 U.S.C. § 103(a) over the ‘678 reference in view of Clark (U.S. Patent No. 6,134,336); and claim 1 is rejected on the ground of nonstatutory obviousness-type double-patenting over claim 1 of U.S. Patent No. 6,628,790. In this discussion set forth below, Applicant does not acquiesce to any rejection or averment in this Office Action unless Applicant expressly indicates otherwise.

Applicant traverses the § 103(a) rejection of claims 1-8 and 12-19 because the cited Erixon ‘678 reference either alone or in combination with the Clark ‘336 reference lacks correspondence to the claimed invention. For example, neither of the asserted references teaches the claimed invention “as a whole” (§ 103(a)) including aspects regarding, *e.g.*, a sound-delivery chamber to amplify the sound conveyed into the acoustic free space relative to the sound conveyed into the space bounded by the ear. Because neither reference teaches these aspects, no reasonable interpretation of the asserted prior art, taken alone or in combination, can provide correspondence to the claimed invention. As such, the § 103(a) rejections fail.

More specifically, the final Office Action and the Advisory Action acknowledge that the ‘678 reference does not teach a sound-delivery chamber as in the claimed invention. The Advisory Action improperly argues (using an interpretation that is inconsistent with Applicant’s specification and M.P.E.P. § 2173.02) that the term ‘amplify’ means that the sound going to the acoustic free space is louder as the laws of physics dictate that the sound is at a higher level closer to the source of the sound. Applicant has amended claim 1 to make clearer that which was implicit in the claims, namely, that the sound exiting the sound-delivery chamber has been amplified relative to the sound entering the chamber. Thus, the sound is amplified while in the chamber, not just with respect to the sound in the space, and with respect to the sound that enters the sound-delivery chamber. The Examiner’s assertion that the difference in sound levels in the area bounded by the ear and the acoustic free space is because of the distance travelled does not explain the different in sound level between the sound entering the sound-delivery chamber and the sound level at the exit to the chamber. According to the Examiner’s assertions, the level should have decreased. The sound-delivery chamber, therefore, must include some structural features that result in sound amplification. The Examiner has not provided correspondence to

these features. Accordingly, the '678 reference, alone or in combination with the '336 reference lacks correspondence.

Applicant further traverses claims 1, 5, 8, 14, 16, 19, and 23. The (final) Office Action improperly relied on Official Notice without providing the required documentary evidence in all of the recited claims. The Advisory Action included support for assertions regarding a new argument regarding the sound-delivery chamber. However, the Examiner has yet to provide full support for the numerous assertions of "official notice" through the (final) Office Action as requested and indicated in M.P.E.P. § 707.07(f) and § 2144.03(a). Further, it appears in many cases the Examiner is attempting to use official notice to overcome the requirement of providing a motivation or teaching to support the asserted modifications to the primary '678 reference, as required by the M.P.E.P. For at least these reasons, the § 103(a) rejections of all claims are improper and should be withdrawn.

Moreover, the claimed invention includes a sound-delivery chamber to amplify the sound conveyed into the acoustic free space relative to the sound conveyed into the space bounded by the ear. The Examiner's asserted sound-delivery chamber (channel 22 of the '678 reference), however, is connected directly to both opening 17 and opening 19 as shown in Fig. 6. As such, Applicant submits that the '678 reference is not capable of amplifying the sound conveyed through opening 19 (*i.e.*, into the asserted acoustic free space) relative to the sound conveyed through opening 17 (*i.e.*, into the asserted space bounded by the ear) because any amplification of the sound by channel 22 would be the same for the sound conveyed through both of the openings 17 and 19. Accordingly, neither the channel 22, nor the channel 22 being modified to be a chamber as proposed by the Examiner, corresponds to Applicant's sound-delivery chamber. In response to the Examiner's assertions in the (final) Office Action regarding structural features, Applicant notes that the claimed sound-delivery chamber includes structural features to amplify the sound conveyed into the acoustic free space relative to the sound conveyed into the space bounded by the ear and relative to the sound that enters the sound-delivery chamber. As the Examiner has failed to cite to any reference that teaches any structure that amplifies the sound conveyed into the acoustic free space, the rejections necessarily fail.

Applicant has amended claims 1 and 6. Support for these amendments can be found in paragraph 0052 of the published applications, for example.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Schaeffer, of NXP Corporation at (212) 876-6170 (or the undersigned).

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